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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/849,529

05/20/2004

Joseph T. Church

3691-723

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09/25/2007

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EXAMINER

GREEN, ANTHONY J

ART UNIT

PAPER NUMBER

1755

MAIL DATE

DELIVERY MODE

09/25/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/849,529

Applicant(s)

CHURCH ET AL.

Examiner

Anthony J. Green

Art Unit

1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 20 May 2004.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application
- ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Loomis (US Patent No. 4,419,256 A).

The reference teaches, in the abstract and the claims, a building insulation comprising 35% to 53% by weight of cellulose fiber, 3% to 5% by weight of an acid-containing fire retardant for reducing the flammability of said cellulose, 7 to 9% by weight of expanded silicate glass for reducing the corrosive effect of said acid-containing fire retardant, and 35% to 53% by weight of mineral wool. Column 6, lines 15+ recite that the R value is approximately 6 per inch.

The instant claims are met by the reference as the reference teaches a composition that encompasses that which is instantly claimed. Note that the amounts of the components of the reference overlap those of the instant claims and accordingly anticipation exists where said ranges of amounts overlap. Note that the composition need not be mixed with an adhesive, this is an optional component. As for the R value, the R value of the reference exceeds that which is instantly claimed. As for the density of the insulation (claims 7-8, 15-16, and 26-27) and the properties recited in claims 9-10, 17-18 and 28, while these limitations are not recited by the reference, since the

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composition is the same the composition of the reference is believed to possess the claimed density and properties absent evidence showing otherwise.

3. Claim 20 and 22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Probst et al (US Patent No. 5,236,757 A).

The reference teaches, in the claims, a thermal insulation board consisting essentially of 0 to 40% perlite, 25 to 50% cellulose fiber, 5 to 60% glass fiber, 1 to 10% binder, and 1 to 8% asphalt.

The instant claims are met by the reference.

The instant claims are met by the reference as the reference teaches a composition that encompasses that which is instantly claimed. Note that the amounts of the components of the reference overlap those of the instant claims and accordingly anticipation exists where said ranges of amounts overlap.

4. Claim 20 and 22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Brandon (US Patent No. 5,318,844 A).

The reference teaches, in the claims, a fibrous non-woven insulation structure comprising 38 to 46% glass fibers, 24 to 32% cellulose, and 22 to 38 % of a binder.

The instant claims are met by the reference.

The instant claims are met by the reference as the reference teaches a composition that encompasses that which is instantly claimed. Note that the amounts of

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the components of the reference overlap those of the instant claims and accordingly anticipation exists where said ranges of amounts overlap.

5. Claim 20 is rejected under 35 U.S.C. 102(b) as being anticipated by Bondoc et al (US Patent No. 5,776,841 A).

The reference teaches, in the abstract and the claims, an insulating board having a foam core laminated to a felt sheet having the composition of a light weight felt composition suitable for siding and roofing underlayment and insulation board facing which comprises, on a dry basis, (a) 60-80 wt. % cellulose fibers; (b) 15-30 wt. % glass fibers having a diameter not less than 5 and not in excess of 16.5 microns and a fiber length of 3/8-3/4inch; (c) 4-10 wt. % binder and (d) 0.5-10 wt. % of non-asphaltic water repellant sizing agent having a flash point higher than 150.degree. F.

The instant claim is met by the reference as the reference teaches a composition that encompasses that which is instantly claimed.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loomis (US Patent No. 4,579,592 A).

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The reference teaches, in the abstract, the examples and the claims, a loose fill insulating composition comprising a mixture of cellulose, boric acid and expanded silicate glass.

The instant claims are rendered obvious by the reference. While the reference does not recite the same amounts of the components it does not teach amounts that overlap or encompass that which is instant claimed. One of ordinary skill in the art at the time the invention was made would have considered the invention to have been obvious because the compositional proportions taught by the reference overlap the instantly claimed proportions and therefore are considered to establish a prima facie case of obviousness. It would have been obvious to one of ordinary skill in the art to select any portion of the disclosed ranges including the instantly claimed ranges from the ranges disclosed in the prior art reference, particularly in view of the fact that;

“The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages”, In re Peterson 65 USPQ2d 1379 (CAFC 2003).

Also, In re Geisler 43 USPQ2d 1365 (Fed. Cir. 1997); In re Woodruff, 16 USPQ2d 1934 (CCPA 1976); In re Malagari, 182 USPQ 549, 553 (CCPA 1974) and MPEP 2144.05.

As for the use of fiberglass, the reference states in column 6, lines 47+, that any type of expanded glass product may be used and accordingly, since it is well known in the art to utilize fiberglass in loose fill insulations, the use of fiberglass as the glass component of the reference is therefore obvious absent evidence showing otherwise. As for the R value, the density of the insulation (claims 7-8, 15-16, and 26-27) and the properties

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recited in claims 9-10, 17-18 and 28, while these limitations are not recited by the reference, since the composition is the same the composition of the reference is believed to possess the claimed density and properties absent evidence showing otherwise.

Information Disclosure Statement

8. The remaining references have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the above rejections.

References Cited By The Examiner

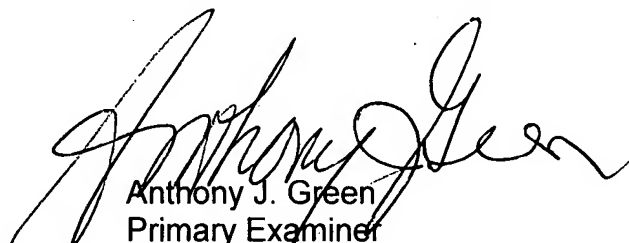
9. The remaining references have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the above rejections.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony J. Green whose telephone number is 571-272-1367. The examiner can normally be reached on Monday-Thursday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Anthony J. Green
Primary Examiner
Art Unit 1755

ajg
September 19, 2007